IN THE HIGH COURT OF DELHI

RSA.No.132/2007

Smt.Shehzadi Begum & Ors. ..... Petitioner
! through: Mr.S.D.Ansari, Advocate

VERSUS

$ Municipal Corporation of Delhi ..... Respondent
^ through: Mr.Amit K.Paul, Advocate.

% DATE OF DECISION: 26.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Mr.Ansari seeks an adjournment which is opposed by counsel for the respondent on the ground that a public street has been encroached upon. Thus adjournment has been denied.

2. The appellant has suffered 2 concurrent findings against him.

3. Appellant had filed a suit for permanent injunction claiming to be owner in possession of shop No.3 in Khasra No.290-293, Lal Kuan, Badarpur, Delhi. He stated that the earstwhile owner inducted him as a tenant but later on sold the

shop to him. He claimed that he purchased the property under general power of attorney, will and an agreement to sell. He stated that MCD had no authority to dispossess him from the site.

4. In the written statement filed it was stated that the shop in question was an encroachment on a public street. That neither the plaintiff nor anyone else had a right over the public street.

5. On the pleadings of parties following issues were framed :-

(i) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

(ii) Whether the plaintiff has no locus standi to file the suit?

(iii) Whether the plaintiff has not come to court with clean hands and has concealed the material facts?

(iv) Relief.

6. Needless to state, all issues had to be decided with reference to the central point whether plaintiff owned the shop and the land comprised thereunder.

7. On 25.5.2007 following substantial question of law was framed :

> "Whether the appellant who is having valid registered sale deed can be thrown out from the premises in dispute?"

8. When he stepped in the witness box appellant proved the photocopies of the following documents :-

i) A general power of attorney executed by Raj Kumar Khurana, Anil Kumar, Jasvinder Kumar, Subhash Chand and Rajesh Kumar. The same has been exhibited as PW-1/1.

ii) An affidavit deposed to by the said persons. Same has been exhibited as PW-2/2.

Iii) A receipt issued by same persons. Photocopy of the receipt has been exhibited as PW-3/3.

iv) Agreement to sell executed by said persons. Same has been exhibited as PW-1/4.

v) Copy of a joint will executed by said persons. Same has been exhibited as PW-1/5.

8. Additionally a certified copy of the sale deed purportedly in favour of previous owner has been proved as Ex.PW-1/6.

9. Suffice would it be to note that the general power of attorney Ex.PW-1/1 is not a registered document. Similarly none of the other proved documents save and except Ex.PW-1/6 are registered.

10. I note that the originals were not produced.

11. Be that as it may, treating the documents to be duly proved, question which arises for consideration is whether the chain of title is complete.

12. The shop in question is stated in the plaint to be on land comprised in Khasra No.290-293, Lal Kuan, Badarpur.

13. Revenue record to evidence title to the agricultural land on which shop was constructed was not summoned by the plaintiff. No title document of the previous sellers has been produced i.e. title of the executants of PW-1/6 has also not been brought on record.

14. The road in question is Badarpur Mehrauli road.

15. Encroachment on public land and public streets is rampant all over the city of Delhi.

16. To succeed, appellant had to prove the complete chain of title in respect of the land. A solitary sale deed is neither here not there.

17. I note that the question of law framed was with reference to a statement made by counsel for the appellant that the appellant was the registered owner of the property vide registered sale deed proved as Ex.PW-1/6.

18. This statement is wrong. Ex.PW-1/6 is the certified copy of the sale deed in favour of the so called previous owners.

19. Learned counsel for the appellant states that the issue of title has not to be gone into. Counsel urges that so long the appellant proved settled position, the appellant was entitled to the relief of injunction. Counsel states that at best respondent

could evict the appellant by following due process of law.

20. For encroachers of public street no process of law is prescribed. Encroachers of public street are not entitled to any statutory notices to be served to be evicted.

21. The appeal is dismissed.

22. LCR be returned forthwith.

23. Dasti.

November 26, 2007 **PRADEEP NANDRAJOG, J.**
pu